

**In the United States Bankruptcy Court**  
**for the**  
**Southern District of Georgia**  
**Brunswick Division**

In the matter of:

RICHARD F. BRUCE  
(Chapter 7 Case 99-21121)

*Debtor*

SARAH J. HALL  
f/k/a Sarah J. Bruce

*Plaintiff*

v.

RICHARD F. BRUCE

*Defendant*

Adversary Proceeding

Number 99-2086

**FILED**  
at 10 o'clock & 16 min **A.M.**  
Date August 24, 2000  
**MICHAEL F. McHUGH, CLERK**  
United States Bankruptcy Court  
Savannah, Georgia

**MEMORANDUM AND ORDER**

Plaintiff, the ex-wife of the Debtor Richard Bruce, brings this action seeking a determination that certain obligations owed to her pursuant to a divorce decree are non-dischargeable pursuant to 11 U.S.C. § 523(a)(5). Based on the evidence at trial and applicable authorities I make the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

The parties were married in 1988 and divorced in 1993. At the time they were married the wife owned a house free and clear of debt and was drawing Social Security benefits for herself and her minor children because her first husband had died. When she remarried in 1988 her individual benefits terminated, but she continued receiving \$1,985.00 in Social Security benefits for her minor children. Debtor was employed and earned an average income of \$1,433.00 per month. At the time of divorce, the wife had a history of earned income from a part-time job working in a physician's office, from which she netted approximately \$120.00 per week for approximately five years. She had quit working by the time of the divorce, but sometime after the divorce was finalized she went back to work earning \$7.00 per hour. She is a licensed medical assistant, but has no current computer skills which would enhance her employment capabilities.

During the life of the marriage the parties borrowed money secured by mortgaging the wife's home in order to pay off debts, to acquire a boat, motor and trailer, and to acquire a jeep. The divorce decree required the husband to pay the wife one-half of the monthly payments on the mortgage and required the wife to make one-half of the monthly mortgage payments. Because of subsequent refinancing, the monthly payment amount was adjusted by subsequent orders of the Court, but ultimately through contempt proceedings brought in the State of Florida, the Debtor was adjudicated to be in arrears under that provision of the divorce decree in the amount of \$9,152.63, the

amount wife seeks to have determined non-dischargeable.

The trial court found that the marital home had increased in value in the amount of \$15,000.00 during the time of the marriage, awarded the husband's claim on the increased equity in the marital home to the wife, and provided for division of liability on the mortgage balance. The husband was awarded the wife's interest in the boat, motor, trailer and the jeep. There were no children born of the marriage and there was no express provision providing for alimony to the wife. Neither was there any provision establishing that the husband's responsibility for paying half of the mortgage would terminate upon the wife's death or remarriage.

### CONCLUSIONS OF LAW

I conclude that the remaining debt owed by the husband to the ex-wife is not actually in the nature of support for the wife and is therefore dischargeable. The Eleventh Circuit dictates that the Court is to look beyond the terms of the divorce agreement or decree and look to the true intention of the parties in reaching the agreement or in the trier of fact in making an award. Harrell v. Sharpe, 754 F.2d 902 (11<sup>th</sup> Cir. 1985). That intent can be gleaned by utilizing various factors which have been approved by the courts over the years. In re Smith, 218 B.R. 254 (Bankr. S.D. Ga. 1997)(stating that the factors to be considered include disparity in the parties' earning capacities, parties' relative business or employment opportunities, the physical condition

of the parties, the educational background of the parties, future financial needs, and benefits each party would have received had the marriage continued). In consideration of the factors that are relevant for the Section 523(a)(5) analysis I conclude that this monetary obligation of the husband was not intended to be actually in the nature of support for the wife. The marriage was of relatively short duration, there were no minor children in the household, and at the time of the divorce, the wife's income, considering Social Security and her own income potential, exceeded that of the husband.


The decree did not expressly characterize any of the financial arrangements made as being in the nature of alimony, and the provisions requiring the husband to make these payments did not terminate in the event of the wife's remarriage. The marital home had appreciated in value during the time of the marriage, had been mortgaged by the parties, and the mortgage proceeds had been utilized to purchase other assets. I conclude that the Court intended simply to effectuate a pure property division by awarding to the wife, who owned the home at the time of the marriage, any appreciation in value of the home, awarding to the husband those assets which had been purchased with the loan proceeds, and requiring them to split the mortgage obligation. There was no evidence to suggest that the wife was in need of financial assistance from the husband in order to meet her living obligations in light of her higher level of income than his and the fact that she was in fact awarded all of the equity in the home.

The parties stipulated that the provisions of 11 U.S.C. § 523(a)(15) which deal with non-support marital obligations, such as property division awards, was not applicable in this proceeding.

I find that the financial obligations of the husband to the wife were not intended by the trier of fact to be actually in the nature of support or alimony for the wife and are therefore discharged.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the financial obligation of Richard F. Bruce to Sarah J. Hall is discharged.

  
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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 23<sup>rd</sup> day of August, 2000.